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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, for the
use and benefit of TESTER DRILLING
SERVICES, INC., an Alaska corporation,
and TESTER DRILLING SERVICES,
INC.,

Use-Plaintiff and,
Plaintiff,

v.

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a
Connecticut corporation (Bond No.
106721293/023038282), LIBERTY
MUTUAL INSURANCE COMPANY, a
Connecticut corporation (Bond No.
106721293/023038282), and UNIT-
ASCRC CONSTRUCTION, LLC, an
Alaska limited liability company,

Defendants.

Case No. 3-18-cv _____

COMPLAINT

COMPLAINT
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*Tester Drilling Services, Inc. v. Travelers Casualty and Surety
Company of America, et al.*
Case No. 3-18-cv _____

Plaintiff United States of America, for the use and benefit of Tester Drilling Services, Inc. (hereinafter “Use-Plaintiff” and/or “Tester”), and plaintiff Tester Drilling Services, Inc. (“Tester”), hereby complain and assert claims against defendants Travelers Casualty & Surety Co. of America, Liberty Mutual Insurance Company (collectively, “Bond Companies”), and UNIT-ASRC Construction, LLC (“UNIT”), as follows:

1. PARTIES AND THE PROJECT

1.1 Tester was a subcontractor on the federal Long Range Discrimination Radar (LRDR) Construction Packet #1 Project (the Project), a federal construction project located on Clear Air Force Station, Alaska. Tester performed substantial amounts of work on the Project that Tester remains unpaid for. Tester brings this suit against Bond Companies, the sureties for the Project’s Miller Act payment bond, to recover payment for Tester’s work. Tester also brings this suit against UNIT, the co-obligor on the bond and the prime contractor on the Project.

1.2 Use-plaintiff Tester and Plaintiff Tester is an Alaska corporation with its principal place of business in Anchorage, Alaska. Tester has met all prerequisites for bringing this action.

1.3 On information and belief, Travelers Casualty & Surety Co. of America is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

1.4 On information and belief, Liberty Mutual Insurance Co. is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

1.5 On information and belief, UNIT is an Alaska limited liability company with its principal place of business in Anchorage, Alaska.

2. JURISDICTION AND VENUE

2.1 The Court has jurisdiction over Bond Companies and UNIT as co-obligors on the bond that Tester seeks to recover from in accordance with 40 U.S.C. § 3133 (the Miller Act).

2.2 The Court also has supplemental jurisdiction over all non-Miller Act claims in accordance with 28 U.S.C. § 1367 as such claims are derived from common operative facts and form part of the same case or controversy as the Miller Act claim—most notably that Tester provided work to the Project under its contract with Unit that Tester has not been paid for.

2.3 Venue properly lies in the United States District Court for the District of Alaska in accordance with 40 U.S.C. § 3133(b)(3) and 28 U.S.C. § 1391(b) as the claims in this action arise from the Project located on Clear Air Force Station, Alaska.

3. FACTS

3.1 The United States, acting through the U.S. Army Corps of Engineers (the Government), contracted with UNIT to build the Project. UNIT, as the prime contractor, purchased a payment bond from Bond Companies (bond no. 106721293/023038282) (the Bond) in accordance with 40 U.S.C. § 3131 of the Miller Act to secure payment for work performed in the course of building the Project. Under the terms of the Bond, UNIT and Travelers bound themselves “jointly and severally” as co-obligors on the Bond for the payment of the Bond’s penal sum.

3.2 UNIT subcontracted with Tester to perform certain Water-Supply Well Construction work on the Project.

3.3 Tester furnished equipment, labor, and materials in carrying out its work as a subcontractor on the Project. By letter of October 16, 2017, UNIT terminated Tester’s subcontract for UNIT’s convenience. Tester has not been paid for a significant portion of this work.

3.4 More than 90 days have elapsed since Tester performed the last of its work on the Project. And less than one year has elapsed since Tester’s last work at the Project. Tester remains unpaid for the work it performed at the Project, as alleged herein.

3.5 As of the time of the initiation of this action, there remains due and owing to Tester for its work at the Project and from UNIT's termination of Tester's subcontract for UNIT's convenience in the principal amount of \$2,483,051.11.

4. TESTER'S CLAIM AGAINST BOND COMPANIES AND UNIT UNDER THE MILLER ACT

4.1 The above allegations are repeated and adopted as if fully set forth here.

4.2 Tester is entitled under the Miller Act (40 U.S.C. §§ 3131-34) to pursue this action against the Bond for the full and final amount due to Tester for its unpaid balance.

4.3 UNIT and Travelers are the principal and secondary obligors, respectively, under the Bond and are jointly and severally liable for payment of the Bond's penal sum.

4.4 The Miller Act entitles Tester to collect against the Bond an amount to be proven at trial, but no less than \$2,483,051.11, plus all interest, costs, and fees recoverable in accordance with applicable law.

5. TESTER'S CLAIMS AGAINST UNIT UNDER THE SUBCONTRACT (BREACH OF CONTRACT, BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, UNJUST ENRICHMENT, AND EQUITABLE ESTOPPEL)

5.1 The above allegations are repeated and adopted as if fully set forth here.

5.2 Despite demand, UNIT refuses to pay Tester amounts owing under the termination for convenience parties' contract and has thus correspondingly breached the implied covenant of good faith and fair dealing.

5.3 Those provisions entitle Tester to judgment against UNIT in an amount to be proven at trial, but no less than \$2,483,051.11, plus all interest, costs, and fees recoverable in accordance with applicable law.

5.4 Alternatively, Unit induced Tester into providing labor, materials, and equipment for the performance of work on the Project, the results of which Unit has absorbed into its own work on the Project, and for which Unit refuses to pay. Tester is entitled to the reasonable value of the labor, materials, and equipment it was induced to provide to Unit, in an amount to be proven at trial, but no less than \$2,483,051.11, plus all interest, costs, and fees recoverable in accordance with applicable law.

REQUESTED RELIEF

The United States of America for the use of Tester Drilling Services, Inc. and Tester Drilling Services, Inc. ask the Court for the following relief:

1. Judgment against Bond Companies and UNIT jointly and severally as co-obligors on the Bond, in an amount to be proved at trial, but no less than \$2,483,051.11, plus all interest, costs, and fees recoverable in accordance with the Miller Act and all other applicable law; and

2. For judgment against UNIT under the parties' subcontract in an amount to be proved at trial but no less than \$2,483,051.11, plus all interest, costs, and fees recoverable under applicable law; and

3. Pre- and post-judgment interest, costs, and attorney fees; and

4. Such other relief as the Court deems appropriate.

DATED this 15th day of October, 2015.

HOLMES WEDDLE & BARCOTT, P.C.

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